

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 122, 263, 264, and 265****[SW FRL 1715-5]**

**Hazardous Waste Management System: Storage Requirements Applicable to Transporters of Hazardous Waste, Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and EPA Administered Permit Program: The Hazardous Waste Permit Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Interim final amendments and request for comments.

**SUMMARY:** In February and May of 1980, EPA promulgated final regulations applicable to transporters of hazardous waste and to owners and operators of hazardous waste storage facilities. 45 FR 12722 (February 26, 1980) and 45 FR 33066 (May 19, 1980). These amendments supplement those regulations by clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. Under these amendments a transporter may hold a manifested shipment of hazardous waste for up to ten days without a RCRA permit and without complying with the standards applicable to hazardous waste storage facilities. If the waste is held for more than ten days, an RCRA permit is required, and the transporter must comply with the applicable storage standards and permit requirements.

**DATES:** Effective date: December 31, 1980. Comment date: EPA will accept public comments on this interim final rule until March 2, 1981.

**ADDRESS:** Comments on the amendment should be sent to the Docket Clerk (Docket 3003—Transportation Storage), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

For general information concerning these regulations, contact Rolf P. Hill, or Carolyn Barley, (202) 755-0150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:****I. Authority**

This interim final regulation is issued under the authority of Sections 2002(a), 3002, 3003, 3004, and 3005, of Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6912(a), 6923, 6924, 6925.

**II. Background Information****A. Introduction**

In regulations promulgated in February of 1980, EPA established standards applicable to generators and transporters of hazardous waste. 45 FR 12742 (February 26, 1980). These standards created, among other things, a manifest system which was designed to track hazardous wastes from their generation through their ultimate disposition. In addition, for the transportation of hazardous waste, EPA adopted many of the requirements of the Department of Transportation (DOT) under the Hazardous Materials Transportation Act designed to ensure the proper and safe transportation of hazardous materials. In May of 1980, DOT amended its regulations to include hazardous wastes in its regulatory program. 45 FR 34560 (May 22, 1980).

In May of 1980, EPA promulgated regulations that, among other things, set standards and permit requirements applicable to owners and operators of hazardous waste management facilities. 40 CFR Parts 264, 265 and 122. 45 FR 33220 (May 19, 1980). These regulations prescribe general operating practices for all hazardous waste management facilities as well as set specific requirements for the storage of hazardous waste. All hazardous waste management facilities must have an RCRA permit to operate or, prior to the issuance of a permit, be in "interim status".

Many transporters own or operate transfer facilities (sometimes called "break-bulk" facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or re-routing. Shipments generally are held at these facilities for short periods of time. The length of time may vary due to such factors as scheduling and weather, but because these facilities are intended to facilitate transportation activities, rather than storage, the time is typically as short as practicable.

In developing the hazardous waste regulations EPA recognized that in the normal course of transportation hazardous waste might be held for short periods of time in vehicles (e.g. in trucks

parked at the transporter's terminal overnight or over a weekend) or at transfer facilities. The Agency did not, however, clearly state that the holding of hazardous waste by a transporter incidental to transportation would not require a RCRA storage permit and compliance with the standards applicable to storage of hazardous waste. A literal application of the regulations, however, might require all transporters who hold waste during transportation or who own or operate transfer facilities to obtain RCRA permits. The transportation industry has asked EPA whether the Agency intended to require transporters to file permit applications and comply with the substantive standards for storage.

**B. Transfer Facility Requirements**

For the reasons set forth below, EPA believes that transporters who hold hazardous wastes for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to obtain a RCRA permit or interim status and comply with the standards of Parts 264 or 265. For the amendments published today, EPA allows transporters to hold wastes in the course of transportation for up to 10 days if the waste is accompanied by a manifest and remains in containers which meet the Department of Transportation (DOT) packaging requirements. These amendments relieve transporters who own or operate a transfer facility of the necessity of obtaining a RCRA permit and of complying with the substantive requirements for storage for the holding of wastes which is incidental to normal transportation practices. The term transfer facility, as used in this amendment, refers to transportation terminals (including vehicle parking areas, loading docks and other similar areas) break-bulk facilities or any other facility commonly used by transporters to temporarily hold shipments of hazardous waste during transportation.

The transportation system established by EPA's regulations should achieve adequate protection of human health and the environment. Transporters have a natural incentive to move shipments quickly and efficiently; their business, most cases, is the movement of hazardous wastes rather than the storage of such waste. In addition, the manifest system requires that the generator receive a copy of the manifest and dated by the designated facility within 35 days. To avoid the necessity of locating shipments of hazardous waste and filing Excepted Reports with EPA, generators will d

prompt transportation and delivery of hazardous waste shipments. These factors, working together, should operate to ensure that wastes will not be held in storage for lengthy periods by transporters.

In addition, the amended regulations set a ten day period for in-transit holding of hazardous waste. This will of course provide a further incentive for transporters to quickly move shipments of hazardous waste. EPA chose a ten day period in order to allow short term holding of waste for transfer and to account for such things as scheduling problems, weather delays, temporary closing and other factors which might cause unforeseen delays. The Agency also received information from the transportation industry indicating that shipments of hazardous waste normally take no longer than fifteen days (including both the actual transportation and the temporary holding of the shipment.) Therefore, providing ten days for in-transit storage of waste will cover almost all transportation related holding activities.

The amendments provide that the hazardous wastes being held at transfer facilities must be in containers (including tank cars and cargo tanks) which meet DOT specifications for packaging under 49 CFR 173, 178 and 179. This provision should ensure that the hazardous waste remains properly packaged during this phase of transportation. Although the Agency believes that this requirement should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility, we solicit comments on whether additional requirements should be imposed, such as contingency plans, personnel training, and inspections. Comments are specifically requested on which, if any, of the Part 265 requirements should be placed on transporters who hold shipments of hazardous waste for ten days or less.

It is important to note that the provisions of Subpart C of Part 263, regarding transporter responsibilities in the event of a discharge, apply to transfer facilities. Specifically, a transporter is required to clean up any hazardous waste discharge and to report the discharge in accordance with the provisions of Department of Transportation's Regulations (49 CFR Part 171).

The Agency believes that adequate protection of human health and the environment can be achieved by limiting the length of in-transit holding of wastes and by requiring the use of DOT containers. These simple requirements

do not have to be implemented through the issuance of RCRA permits and compliance with all the requirements for hazardous waste storage facilities. EPA further believes that the administrative burdens on both the regulated community and EPA are substantially reduced without detriment to the protection of human health and the environment.

In addition, by allowing limited in-transit storage without a RCRA permit or interim status, these amendments better serve the important purposes of the manifest system by enabling and requiring the generator to designate the ultimate treatment, storage or disposal facility, rather than a transporter transfer facility and by ensuring the prompt delivery of hazardous waste shipments to such facilities. If hazardous wastes had to be manifested to a permitted or interim status transfer facility where the wastes were held temporarily, then the generator would be unintentionally relieved of the important responsibility of designating and assuring delivery to the ultimate treatment, storage or disposal facility.

The ten day exemption only applies when a transporter is holding the manifested shipment of hazardous waste in containers which meet applicable Department of Transportation regulations for packaging. The Agency decided to exclude the holding of hazardous waste in stationary storage tanks from these amendments because the intent of this action is to accommodate those normal and routine transfer activities raised by the transportation industry. Specifically, the industry was concerned about RCRA's application to transport vehicles parked at transfer facilities and to containers which, in the course of being transferred from one vehicle to another, were held on a loading dock or other similar facility for a short period of time. The Agency specifically requests comments on whether the ten day exemption should be expanded to include temporary storage in tanks meeting the requirements of Subpart J of 40 CFR Part 265 (except § 265.193).

These amendments do not affect the manifest system established in the February and May regulations. The generator, each transporter and the designated facility are still required to sign the manifest. The Agency is, however, considering requiring additional entries on the manifest. Specifically, comments are requested on whether signatures and dates should appear on the manifest indicating when the shipment entered and left the transfer facility.

These amendments do not place any new requirements on transporters re-packaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous wastes at transfer facilities. The Agency solicits comments on whether regulatory controls over the consolidation of shipments and mixing of hazardous waste by transporters are warranted. Specifically, should controls similar to those in Part 265 regarding the mixing of incompatible waste be placed on transporters?

#### IV. Interim Final Regulations and Effective Date

##### A. Interim Final Regulations

EPA has determined under Section 553 of the Administrative Procedures Act, 5 U.S.C. 553, that there is good cause for promulgating these amendments without prior notice and comment. Without these amendments, transporters who own or operate transfer facilities, under a literal application of the regulations, could continue to operate such facilities on or after November 19, 1980 only if they had a permit or interim status and complied with the applicable requirements of Parts 264 or 265. We believe that it is essential to correct this and to clearly set forth the obligations of transporters.

##### B. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare and to comply with major new regulatory requirements. For the amendments promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would not be in the public interest. Since the amendments reduce, rather than increase, the existing requirements for transporters, there is no basis for allowing a lengthy period of time for transporters to prepare for compliance. Therefore, the regulatory provisions that these amendments modify take effect immediately.

#### V. Environmental, Economic and Regulatory Impacts

These amendments reduce the economic, reporting and record-keeping impacts on transporters who own or operate transfer facilities by virtue of eliminating, in most cases, the